

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER D. MORRIS and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, Fla.

*Docket No. 98-2622; Submitted on the Record;
Issued May 6, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board has duly reviewed the case record and finds that the Office did not meet its burden of proof in this case.

In the present case, the Office accepted that appellant, a modified mail carrier, fell on October 22, 1996 and sustained right knee, cervical and lumbar strains. Appellant stopped work on that date and did not return. On November 3, 1997 the Office terminated appellant's compensation benefits on the grounds that the weight of the medical opinion rested with the Office second opinion physician, Dr. Frank Kriz, a Board-certified orthopedic surgeon, who opined that appellant no longer had residuals of the accepted injury. On May 4, 1998 an Office hearing representative vacated the termination of appellant's compensation benefits. The hearing representative found that a conflict existed in the medical opinion evidence, which required that appellant be referred to an impartial medical specialist. The hearing representative found that Dr. Kriz had concluded that appellant had recovered from the effects of his October 22, 1996 injury based on the absence of objective findings when he evaluated appellant. By contrast, Dr. Feldman listed multiple diagnoses pertaining to appellant's back and right knee, which he attributed to this October 22, 1996 injury. The hearing representative noted that Dr. Feldman had indicated the presence of a torn medial meniscus in the right knee and a herniated disc at L5-S1 in the lumbar spine, both supported by magnetic resonance imaging (MRI) scans obtained in December 1996. Also a cervical MRI performed on November 15, 1996 revealed a herniated cervical disc. The hearing representative stated that on remand, appellant, and the entire case record including appellant's MRI scans, should be evaluated by an impartial medical specialist to determine whether appellant had any current diagnosable physical condition related to the neck, back or right knee which was causally related to his October 22, 1996 employment injury and whether appellant remained disabled for the job he held on the date of injury. The hearing representative also noted that if the specialist felt that appellant had

ongoing problems related to his October 22, 1996 injury, the Office would then have to develop the issue of whether or not appellant suffered from any psychiatric problems related to that injury. The hearing representative noted that Dr. Gary Arthur, a psychiatrist, had stated that appellant suffered from a dysthymic disorder secondary to pain from his injury, therefore, it might become necessary to refer appellant to a second opinion psychiatrist.

The Office thereafter referred appellant to Dr. Jeffrey R. Chain, a Board-certified orthopedic surgeon, for an impartial medical evaluation. The Office again terminated appellant's compensation benefits on July 30, 1998 on the grounds that Dr. Chain's report established that appellant no longer was disabled due to residuals of the accepted employment injury.

5 U.S.C. § 8123(a) provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹

In his report dated June 30, 1998, Dr. Chain noted diagnoses of chronic cervical and lumbosacral strain, degenerative disc disease of the cervical and thoracic spine, status post anterior cervical fusion C5-6 and C6-7 with subsequent C4-5 segmental instability of the cervical spine, degenerative arthritis right knee and status post fracture right femur. He opined that the diagnoses related to the employment injury were exacerbation of chronic cervical and lumbar strain and right knee strain. Dr. Chain stated that he felt it was unlikely that appellant would return to his former employment, primarily due to subjective complaints, but also due to objective findings. Dr. Chain explained that it was extremely unlikely that appellant would tolerate even his prior modified position, partially from his physical limitations due to the previously related diagnoses and in all likelihood at least partially due to his inability to handle his chronic pain and other psychological factors which would have to be addressed by a psychiatrist. Dr. Chain opined that appellant's preexisting conditions were the "primary" reason for his persistent disability. He noted that it appears that the injuries appellant sustained in October 1996 were minor in nature and his symptoms were primarily related to his preexisting conditions. Dr. Chain explained that while it appeared that most of appellant's symptoms predated his 1996 injury, the employment injury may have exacerbated his symptoms, but he would have expected that appellant would have returned to his baseline level of symptoms which existed prior to October 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.²

¹ *Roger Dingess*, 47 ECAB 123 (1995).

² *Lawrence C. Price*, 47 ECAB 120 (1995).

Dr. Chain's report is not sufficient to establish that appellant's accepted employment injury had ceased to disable him. Dr. Chain's report is ambiguous at best. He noted that appellant still had diagnoses of chronic cervical and lumbar strain and right knee strain, the conditions which were accepted as causally related to the employment injury. Dr. Chain did not indicate that these conditions had resolved. Furthermore, while Dr. Chain opined that it appeared that most of appellant's symptoms were caused by his preexisting conditions, he also indicated that the employment injury may have exacerbated his symptoms. Dr. Chain indicated that he would have expected appellant's symptoms to return to baseline level, but he did not indicate that they had in fact returned to baseline. Moreover, as did the hearing representative in vacating the prior termination of compensation, Dr. Chain also noted that appellant may have a psychiatric condition arising from his chronic pain. Dr. Chain's report did not provide the necessary rationalized medical opinion necessary to establish that the residuals of the accepted injury had ceased and appellant was no longer disabled as a result thereof. The Office, therefore, did not meet its burden of proof in this case.

The decision of the Office of Worker's Compensation Programs dated July 30, 1998 is hereby reversed.

Dated, Washington, D.C.
May 6, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member